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C O N F I D E N T I A L NAIROBI 002571

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SUBJECT: KENYA ARTICLE 98: ANTI-U.S. CENSURE MOTION MAY

HAVE LITTLE TRACTION

REF: A: NAIROBI 02446

Classified By: ACTING POL/C LISA PETERSON, REASONS 1.4 (B) AND (D)

¶11. (C) SUMMARY. Kenyan newspapers reported during the week of June 13 that MP Paul Muite had filed a motion in Parliament to censure the U.S. for attempting to arm-twist Kenya into signing an Article 98 agreement. A reliable source in Parliament reported, however, that, as of June 21, no such motion had been received. Given more pressing Parliamentary priorities, the motion would not likely be debated any time soon even if it is filed. Muite may have been currying political favor by threatening to file the motion (thus adding Parliamentary cover to the Article 98 opposition) without ever intending to follow through. END SUMMARY.

¶12. (U) A June 13 Nation article (reftel) followed by a longer article in the June 16 Kenya Times reported that Paul Muite, a Member of Parliament from a small party (SAFINA) that is part of the NARC coalition, filed a motion of censure against the U.S. for attempting to coerce an Article 98 agreement in Kenya. The Times article said the motion read, in part, "This House expresses its abhorrence to the conduct of the United States of America in refusing to ratify the International Criminal Court (The Rome Treaty) and its attempts to coerce countries to sign the Non-Surrender Agreement (Article 98) at the risk of curtailment of military and other economic assistance and calls on the government NOT to sign the Non-Surrender bilateral Agreement and further expresses its solidarity with the government and the people of Kenya on the stand that Kenya's sovereignty and dignity must come first ahead of military support and aid from any quarters."

¶13. (U) The Sunday Standard devoted nearly two pages to three articles June 19 under the overall caption "Kenya-U.S. relations on trial." The first sentence of the lead article said that, by virtue of the Muite motion, relations between the U.S. and Kenya were headed for "their lowest point since independence."

¶14. (C) The Muite motion may, however, be more chimerical than real. Fred Matiangi, deputy director of a U.S.-funded Parliamentary strengthening project, told poloff June 21 that the motion had not yet been filed. He added that, even if it is filed soon, the House Business Committee, which controls Parliament's agenda, is not likely to schedule debate on the motion in the near future because the Committee will give precedence to government-sponsored legislation over private members' motions.

¶15. (C) Some opposition to the motion, moreover, has already been voiced in Parliament. Nominated KANU MP Mutula Kilonzo said he opposes the motion because the issue belongs with government, not Parliament. Kilonzo was quoted in the June 19 Sunday Standard as saying, "I don't agree with the pressure America is putting on us. But I also don't agree that Parliament can be used to censure a friendly foreign country pursuing her right to protect her citizens." Joseph Nkairessy, a retired general and now a KANU MP and the party's shadow defense minister, was quoted in the same paper as saying, "We need America. It controls the World Bank and the IMF and has weight on other countries. We cannot be populist on this. Let's leave this to foreign affairs."

¶16. (C) COMMENT. While the Muite motion may never actually be filed or debated in Parliament, it has already had the effect of dragging Parliament, which had hitherto been silent, into the Article 98 debate. Muite may also have had political and personal reasons for filing the motion. Muite, who maintains a private law practice, has been charged in a lawsuit with stealing money from clients; he may be looking for government assistance in making these charges disappear. END COMMENT.

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